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ABSTRACT

This paper addresses the concerns of physical educators who must implement coeducational programs in secondary school physical education. Title IX regulations which relate directly to physical education are presented as well as the Oregon Administrative Rules. The paper covers eight concepts of federal and state regulations that have direct impact on physical education. These concepts are: (1) locker room supervision; (2) facilities and equipment; (3) scheduling; (4) assessing skills; (5) contact sports; (6) grouping by ability; (7) leadership and staffing; and (8) disproportion in classes. For each concept, an interpretation of the law and the law's effect is presented, and recommendations are suggested for implementation. (JD)

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PHYSICAL EDUCATION
CONCEPT PAPER

Oregon Department of Education **Number 2**

Achieving High Quality, Equitable Physical Education

FOREWORD

The most frequently asked questions about physical education usually relate to the implementation of coeducation into secondary school programs. Although the federal law and Oregon Administrative Rules call for coeducational physical education, it is often a tall order to fill from the perspective of the practitioner, regardless of one's personal opinion.

Mixed gender classes in physical education have had varying reviews by students, parents, administrators and teachers. Furthermore, the heterogeneity of student groups nowadays, which includes the handicapped to the talented, the small to the large, the skilled to the unskilled, the endowed to the determined, the tall to the short, the aggressive to the passive, the cooperative to the uncooperative, the competitive to the uninterested, are all factors beyond gender that affect physical education classes.

Because physical education has been encouraged by the state legislature to provide "high quality" programs to all students, the following pages are, in part, a revisit of the directives of Title IX and Oregon Administrative Rules. Presented are Title IX regulations which relate directly to physical education, followed by an interpretation and explanation of their effects on school policies and practices. Also offered are alternatives which might be helpful in providing quality coeducational programs.

It is the intent of this document to provide technical assistance to school districts as teacher inservice activities are planned and teachers continue to develop their skills as instructors grounded in equity, anti-discriminatory practices and content expertise. It is a means to enhance the planning, teaching and assessment that occur in the highly visible subject of physical education.

For more information, please contact: (1) Arnie Leppert, Director of Federal Programs, 378-3606; (2) Kathryn Murdock, Director of Legal Services, 373-7714; (3) Bob Ritson, Specialist, Physical Education, 373-7898.

Thanks must be offered to the Oregon Department of Justice, General Counsel Division, for their work in reviewing the legal citations and providing general assistance with this publication.

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INTRODUCTION

Title IX of the Education Amendments of 1972, Public Law 92-318 states:

> *. . . no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, . . .*

The 1975 HEW regulation for implementing Title IX required each educational system to perform a searching self-examination of its policies and practices relating to differential treatment of male and female students and teachers. In areas where real or potential sex discrimination was identified, remedial action was mandated.

By July 12, 1978, all public educational institutions were to have eliminated any barriers within their control which restricted equal opportunities for both sexes, grades kindergarten through twelve. Separate physical education classes for boys and girls, a traditional practice at the secondary level in most school systems nationally, were ruled in violation of the "equal opportunity" principle. The regulations specified that coeducational classes were to be instituted in all disciplines, including physical education.

In addition to federal legislation, the State Board of Education enacted Oregon Administrative Rules 581-21-040, 045, 046, 048, and 049 on September 17, 1976. There was accompanying statutory authority in the Oregon Revised Statutes and the Governor's Executive Orders.

OAR 581-21-040 states that evidence of compliance for equal employment and educational opportunity shall be based on:

- Development and implementation of Affirmative Action Plans.
- Submission to the Oregon Department of Education a Statement of Assurance upon completion of the Affirmative Action Plans.
- Submission of progress reports to the Oregon Department of Education as prescribed by the Superintendent of Public Instruction.
- Remarks about the status of Affirmative Action Plans in accreditation and standards visit reports.

The pages that follow are organized into eight concepts of the law that have direct impact on physical education. Seven concepts are common concerns that were first addressed in a wall chart produced by the Department of Education in 1980. Their "recommendations" have been revised to reflect current practice, but excerpts from the law have required no revision. The eighth concept looks at impact and future directions for physical education. This document does not address aspects of the regulations which apply exclusively to athletics.

A list of resources concludes the publication.

LOCKER ROOM SUPERVISION

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

45 CFR Part 86.33

Interpretation: The law allows the use of separate shower and locker room facilities by boys and girls. These separated facilities must be comparable.

Effect: It may be necessary for administration to establish locker room supervision assignments separate from the instructional assignments.

Recommendations: Supervision may be facilitated by parallel staffing (same number of women and men on total physical education staff) and parallel scheduling (a 1:1 male/female teacher ratio each period). Alternatives for supervisory assignments include:

- Base Teacher: Students are assigned a base teacher of the same sex who supervises the showering process, assigns lockers, and takes care of other administrative duties for them.

- Period Supervisory Schedule: Teachers are assigned one or more periods of the day to be responsible for locker room supervision. Supervision might include operating student services such as passing out towels, the lost and found, supervising dressing and showering, and responding to emergency situations.

- Buddy System: One male and one female staff member may be identified as "buddies" for given periods of the day. Their students report to the teacher of like sex for locker room assistance.

- Faculty: School faculty members representing other disciplines supervise the dressing/showering process and assist in emergency situations on a regular or rotating basis.

- Locker Room Attendants: The administration provides paid locker room supervisors to be responsible for student services and the maintenance of appropriate student behavior. If this system is instituted, the school district must establish procedures for hiring qualified attendants, who may be held legally responsible for students assigned to their care in the locker/shower area. Attendants need not be certified teachers if properly trained to supervise students in the locker room.

- It is <u>not</u> recommended that a student be given the responsibility of locker room supervision.

Supervision may need to be separated from instructional duties. It is not legal to separate by sex for class if a locker room supervision difficulty exists. Not having a male on the staff is not an excuse to run an all-females class, in all classes, or even during one period. This is true (K-12) in required, elective and selective courses.

FACILITIES AND EQUIPMENT

Physical education facilities and equipment must be made available to female and male students and instructors. . . . Different safety and protective equipment for males and females may be provided if the equipment is clearly related to their safety during participation in the particular activity in which it is to be used.

45 CFR Part 86.33

Interpretation: Both male and female students and instructors must have equal access to physical education facilities.

Safety equipment provided for males and females may be different in design based on gender if such difference is clearly relevant to the safety of the specific gender.

Effect: Previous "Boys' Gym" and "Girls' Gym" designations must be replaced by non-sexist titles such as "North Gym" and "South Gym" or "Old Gym" and "New Gym." Teachers will be scheduled to use facilities which best provide for their instructional need. Equipment available to only one sex, if located within a locker room area, must be moved to a location accessible to all students and teachers.

Recommendations: The department may wish to use supply rooms located within dressing areas for long-term storage and share areas accessible to teachers of both sexes for storage of supplies in current use.

When organizing program offerings, whether required or elective, activities should be scheduled into appropriate facilities without regard to the teacher's sex or past use of the area.

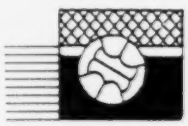
SCHEDULING

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein, by any of its students on such basis, including health, physical education, industrial, business, vocational technical, home economics, music, and adult education courses.

45 CFR Part 86.34

Interpretation: Physical education classes shall not be offered separately on the basis of sex nor shall participation in physical education programs or activities be required or refused on the basis of sex, and remedial steps must be taken to alleviate the effects of any discrimination identified from previously offered courses or programs.

Effect: This regulation actually eliminates the two-program approach to physical education. "Girls' Physical Education" and "Boys' Physical Education" must become "Physical Education." Units or activities required of one sex must be required of the other. In addition, where elements of discrimination have existed, there is a direct responsibility to eliminate it from the perception of administration, teachers, students and perhaps parents and others affiliated with the school.



Recommendations: Before any scheduling of classes and facilities for a school's physical education program is done, the following

options should first be explored jointly by the administration and department to determine which plan might be most beneficial to the students and also administratively feasible.

- Parallel scheduling of female and male staff members on a 1:1 ratio each period should be a major consideration in the implementation of all these alternatives. Parallel scheduling will aid in (1) better utilization of teachers' training and expertise; (2) the separation of students by sex in the participation phase of contact sports, if desired; (3) role identification of students with teachers of like sex; and (4) proper supervision of the locker rooms.

- Schedule students to physical education by selective subject areas ("Recreational Games," "Lifetime Sports," or "Advanced Gymnastics," for example). These classes must be open to both boys and girls. Teachers would keep these students for the length of the activity unit—perhaps nine weeks a semester, or an entire year.

- Assign approximately the same number of boys and girls into each physical education teacher's class. This option will work more effectively when there is parallel scheduling of staff members (female/male). Students in the same grade level should be assigned together to permit sequencing of programs. Teachers may or may not keep this group of students for the semester or year. The teacher may: (1) provide instruction in prescribed units predetermined for the level or class by the department, or (2) allow the total class to select favored activities within categories like team sports, rhythms, etc.

- Schedule approximately the same total number of boys and girls to the total staff available each period (e.g. assign 120 students, approximately 60 boys and 60 girls, to the physical education staff the first period, during which two men and two women are scheduled to teach). Physical education teachers would assign students to activities or give students a choice of activities to select.

  NOTE: (a) If teachers assign students, classes must be coed; (b) If students select classes, all classes must be open to both boys and girls; (c) In contact sports students may be separated by sex within the class during competitive play or participation in drills where contact is a likely expectation.

- Schedule approximately the same total number of boys and girls to the total teachers available each period (as in the third option, above) for division into instructional groups based on ability tests appropriate for the activity to be offered. Teachers may group students on the basis of ability, provided specified standards of individual performance are utilized that do not have a practical effect of unnecessarily limiting the opportunities of students of either sex. Tests used for ability grouping must relate positively to skills in the unit for which grouping is being done.

- Any combination of the above. Certain grade levels may be assigned to specific courses while more advanced groups may be offered electives.

ASSESSING SKILLS

Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

45 CFR Part 86.34(d)

Interpretation: If measuring all students with one standard is prejudicial to one sex, standards shall be implemented which are fair to all students, even though such standards may be based on gender.

Effect: Teachers must be sensitive to the possibility that some standards previously used in assessing skills on one sex may be inappropriate if applied to the other. In such cases, other performance standards which are not sex-related may be employed, such as measuring improvement. In most assessments which emphasize strength to a considerable extent—push-ups, bench press, long jump—two sets of performance standards may be established. Since strength has proven to be a significant component with many sports, and because the average male at the secondary level measures significantly higher in muscular strength than the average female, skills tests derived from most sports will tend to favor the male. In addition, when administering tests involving shooting baskets or volleyball (where height also may be an advantage), teachers may need to establish a dual standard of assessment.

Recommendations: Assessing students' skills or progress in physical education should be based on performance standards which are consistent with the goals of the course and program. In addition to skills development, if participation and cognitive achievement are included in goals, these should be included as portions of the total assessment for each student.

Criteria for assessment should be clearly delineated for each course or activity within the physical education program. Criteria or performance standards adopted should be disseminated to all staff and described in planned course statements.

Teachers should recognize that separate performance standards for assessing psychomotor ability in activities which previously were often restricted to a single sex (wrestling, football, dance, field hockey) may be necessary as a temporary measure. Once students have been given an opportunity to develop skills in these activities, the dual standard may no longer be needed unless other factors dictate its continuation.

CONTACT SPORTS

This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

45 CFR Part 86.34(c)

Interpretation: Students may be separated by sex within physical education classes for participation in sports or activities of which the major purpose involves bodily contact.

Effect: Students must be taught in mixed gender groups contact sports skills which are not of a contact nature in themselves. Legally, when it is time to participate in drills involving contact or in the game situation, class members may be separated by sex, but it is not mandatory.

Recommendations: School systems may wish to treat flag and touch football, field hockey, soccer, speedball, speed-a-way, and team handball as contact sports. If so, **a ruling on categorizing these activities accordingly should be sought from the Office of Civil Rights** by writing to the regional office indicating the reasons why a particular sport qualifies as a contact sport and requesting a ruling. Due process would include petitioning through the school district and the Oregon Department of Education, prior to contacting the Office of Civil Rights in Seattle, WA.

When activities categorized by HEW or the LEA as contact sports are played using regulation rules in competitive class situations, the legal option of separation by sex should be employed if safety considerations indicate that such action would be in the best interest of the participants.

NOTE: Baseball and softball have been judged <u>not</u> to fall within the definition of contact sports.

GROUPING BY ABILITY

This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

45 CFR Part 86.34(b)

Interpretation: Students may be grouped in physical education classes and activities by ability as assessed by non-gender-biased objective standards of individual performance developed and applied without regard to gender differences.

Effect: Such ability ranking within one or more combined classes at the beginning of a unit may result in instructional subgroups composed of one sex or predominantly one sex.

Recommendations: Teachers should review the fundamental purposes of ability grouping for participation in physical activities:

- Student safety during play and practice of skills
- Increased individualized instruction

Ability grouping should be based on an objective assessment of each student, perhaps a check sheet or series of skills tests. Pretesting to determine ability groups should be restricted to one or two periods. Teachers should consider a minimum of three groups when dividing student groups by ability level.

In units or activities in which student ability grouping is desired, standards used must apply directly to that sport (e.g. students should be grouped for participation in basketball activities according to their abilities in shooting, dribbling, and passing, rather than upon their abilities in track, swimming, or general fitness).

LEADERSHIP AND STAFFING

No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection . . . .

45 CFR Part 86.51(a)(1)

Interpretation: The criteria employed for selecting department head(s) or chair(s) and staff must be free from discrimination. Implementation of Title IX must not have an adverse effect on the employment opportunities of the members of one sex.

Effect: A district or school may elect to merge previously separate girls' and boys' physical education departments into a single administrative structure or permit them to remain separate. If a single administrator is to be determined, sex-free criteria must be established for the selection.

Recommendations: As stated previously, parallel scheduling both of female and male teachers and students each period should be employed in physical education whenever possible to provide:

- Balanced staff competence in the instructional program;
- Adult models of both sexes each instructional period who can demonstrate expertise in numerous physical education activities;
- Personal counseling for members of both sexes;
- Equivalent supervision in male and female locker rooms. (One woman supervising 90 girls in the girls' locker room while three men supervise a like number of boys in the boys' locker room is probably not acceptable from a safety or legal point of view.)

Although Title IX does not dictate that there be just one physical education department, it does indicate that there must be one program, or all students must have the opportunity to participate in all program offerings. The necessity for joint program planning suggests particular value in having the department staff meet frequently. To enhance communication possibilities among all members of its physical education department, a school may wish to physically locate male and female staff members within the same planning office.

Administrators should recognize that schools which reduce teachers or administrators of one sex and create obvious overstaffing of the other sex are in danger of violating Title VII (Civil Rights Act: 1964, as amended), which requires equal opportunity in employment.

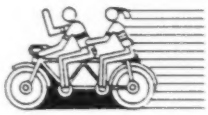
DISPROPORTION IN CLASSES

Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

45 CFR Part 86.36(c)

Interpretation: Under this provision of the regulation, agencies and institutions are required, if and when they find that a particular class contains a "substantially disproportionate number" (usually considered to be 80 percent or above) of students of one sex, to take actions to assure themselves that this is not the result of sex discrimination in counseling.

Effect: The primary significance of this provision is, of course, for counseling programs and staff. In agencies and institutions in which physical education courses are offered on an elective basis, with related course counseling provided by either counseling or physical education staff members, this provision may, however, become relevant to sexually disproportionate enrollment in physical education classes for which no skills prerequisites are specified.



Recommendations:

- Counselors and physical educators should ensure that they are not limiting student options on the basis of sex nor promoting and reinforcing sex stereotypes. Counselors should be aware of and sensitive to possible sex bias within themselves.
- Counseling tools and course materials should ensure the integrity of both sexes.
- A student should not be limited by gender in the consideration of options. Students should be encouraged to consider all programs of study and all career options consistent with their interests and talents.
- A course that demonstrates enrollments which are clearly gender biased should be changed to eliminate the stereotyping or the element(s) of discrimination.

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(3) *Biological Sex Differences* by Agnes Chrietzberg
(4) *Title IX* by Ann Uhlir
(5) *Curriculum Development* by Mary Neikirk
(6) *Teacher Behavior* by Ann Uhlir
(7) *Student Performance Evaluation* by Ann Uhlir

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